

**373-381 South Broadway Associates and Sunview Management Corp. and Service Employees International Union, Local 32E, AFL-CIO.**  
Case AO-288

July 31, 1991

ADVISORY OPINION

BY CHAIRMAN STEPHENS AND MEMBERS  
CRACRAFT, DEVANEY, OVIATT, AND  
RAUDABAUGH

Pursuant to Sections 102.98(a) and 102.99 of the National Labor Relations Board's Rules and Regulations, on June 17, 1991, 373-381 South Broadway Associates and Sunview Management Corp. (Petitioners) filed a petition for an Advisory Opinion as to whether the Board would assert jurisdiction over their operations.

In pertinent part, the petition alleges as follows:

1. A representation proceeding, Case SE-57913, is currently pending before the New York State Labor Relations Board (SLRB) in which Service Employees International Union, Local 32E, AFL-CIO (the Union) is seeking to represent certain employees employed by Petitioner South Broadway at its apartment building located at 373-381 South Broadway, Yonkers, New York.

2. Petitioner South Broadway is the fee owner of the apartment building located at 373-381 South Broadway, Yonkers, New York. Petitioner Sunview is the managing agent of the building. The building consists of 60 residential units and 7 commercial stores.

3. The current annual rent roll of the building is \$509,448 and is expected to increase during the coming year. During 1990, Petitioners purchased from a local oil company over \$66,000 in fuel oil, which emanated from outside the State of New York, and also purchased from within the State over \$47,000 worth of other materials and supplies for the building, many of which likewise originated outside the State of New York.

4. In addition to managing the building at 373-381 South Broadway, Yonkers, New York, Petitioner Sunview also manages five apartment buildings in the city of New York and one commercial office building in Great Neck, Nassau County. The annual rental income from these other properties totals approximately \$1.8 million. Sunview purchased over \$51,000 of fuel for these premises which originated outside the State of New York.

5. The aforesaid commerce data has been neither admitted nor denied by the Union, and the SLRB has not made any findings with respect thereto.

6. There is no representation or unfair labor practice proceeding involving the same dispute pending before the Board.

Although all parties were served with a copy of the petition for Advisory Opinion, none filed a response as permitted by Section 102.101 of the Board's Rules.

Having duly considered the matter, we find that the petition is insufficient for us to render a meaningful opinion as to whether the Board would assert jurisdiction over Petitioner South Broadway, the owner of the subject building. The Board has established different jurisdictional standards for residential and commercial buildings.<sup>1</sup> Further, where, as here, the property owned and/or managed by the employer is diversified, the Board has historically analyzed one or the other portions of the employer's operation to determine whether it meets the relevant jurisdictional standard.<sup>2</sup> If it does, the Board will assert jurisdiction over the entire operation.<sup>3</sup> The petition here, however, fails to specify what portion of the \$509,448 in annual rental income from the subject building is derived from the residential apartments and what portion is derived from the commercial stores tenanted in the building. Thus, we are unable to make this determination.<sup>4</sup>

On the other hand, we are able to determine that the Board would assert jurisdiction over Petitioner Sunview, the managing agent of the subject building. Although, as indicated, the Board normally analyzes each portion of a diversified real estate operation separately, the Board has recognized an exception where the gross annual revenues from the employer's entire operation exceed \$1 million—the highest discretionary jurisdictional monetary standard the Board applies to any enterprise.<sup>5</sup> Here, as the petition alleges that the combined annual rental income from all the residential and commercial properties managed by Sunview in addition to the subject building exceeds \$1.8 million, Sunview clearly satisfies this standard. Further, as the petition also alleges that Sunview purchased over \$51,400 of fuel originating outside the State of New York for those properties, it also satisfies our statutory jurisdictional standards.<sup>6</sup>

<sup>1</sup> Compare *Parkview Gardens*, 166 NLRB 697 (1967), and *Imperial House Condominium*, 279 NLRB 1225 (1986), *aff'd*, 831 F.2d 999 (11th Cir. 1987) (establishing \$500,000 standard for residential apartments and for condominiums and cooperatives, respectively) with *Mistletoe Operating Co.*, 122 NLRB 1534 (1959) (holding that jurisdiction will be asserted over commercial office buildings when the employer's gross annual revenue amounts to \$100,000, of which \$25,000 is derived from organizations whose operations meet any of the Board's standards exclusive of the indirect outflow or indirect inflow standards).

<sup>2</sup> See *Carol Management Corp.*, 133 NLRB 1126 (1961), and cases cited there.

<sup>3</sup> See *id.*

<sup>4</sup> We are also unable to determine, based on the allegations in the petition, whether Petitioners South Broadway and Sunview are joint or single employers.

<sup>5</sup> See *135-45 West Kingsbridge Avenue Assoc.*, 300 NLRB 946 (1990), and *Mandel Management Corp.*, 248 NLRB 186 (1980).

<sup>6</sup> See *NLRB v. Reliance Fuel Oil Corp.*, 371 U.S. 224 (1963). We assume in this regard that the local suppliers from which Sunview purchased the oil had received the oil *directly* from outside the State of New York. Cf. *Better Electric*, 129 NLRB 1012 (1960) (such an assumption necessary in order for

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Accordingly, the parties are advised that the Board is unable to issue a meaningful opinion on whether it would assert jurisdiction over Petitioner South Broadway, but that, based on the foregoing allegations and assumptions, the Board would assert jurisdiction over Petitioner Sunview.<sup>7</sup>

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purchases to constitute indirect inflow under Board's nonretail jurisdictional standard).

<sup>7</sup>The Board's Advisory Opinion proceedings under Sec. 102.98(a) of the Board's Rules are designed primarily to determine whether an employer's operations meet the Board's "commerce" standards for asserting jurisdiction. Accordingly, the instant Advisory Opinion is not intended to express any view

MEMBER OVIATT, dissenting.

Contrary to my colleagues, I would require both Petitioners, South Broadway and Sunview, to submit further information regarding their real estate operations before issuing an opinion as to the Board's jurisdiction over either. See my dissenting opinion in *135-45 West Kingsbridge Avenue Assoc.*, 300 NLRB 946 (1990). Cf. *Century Assets*, 280 NLRB 1352 (1986).

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as to whether the Board would certify the Union as representative of the petitioned-for unit under Sec. 9(c) of the Act. See generally Sec. 101.40(e) of the Board's Rules.